

In the Matter of Merchant Mariner's Document No. Z-735095-D1 and
all other Licenses, Certificates and Documents
Issued to: FRANCISCO ESTRADA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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FRANCISCO ESTRADA

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulation Sec. 137.11-1.

By order dated August 1955, an Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z-735095-D1 issued to Francisco Estrada upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a wiper on the American SS SETON HALL VICTORY under authority of the document above described, on or about 9 May 1955, while ashore in the port of Bremerhaven, Germany, he wrongfully stabbed a fellow crew member, Wilson Akers, with a deadly weapon; to wit, a knife.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by counsel of his own choice and he entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of the injured seaman, Boatswain Akers, and the of able seaman Cook who was with Akers at the time of the stabbing. The Investigating Officer also introduced in evidence a certified copy of the record of Appellant's conviction in a Bremerhaven county court as a result of this incident.

In defense, Appellant offered in evidence testimony of three witnesses concerning a prior altercation between Appellant and Akers in the Port of New York. Appellant also testified, under oath, in his own behalf.

Appellant stated that he used a broken bottle in self-defense and cut Akers when attacked Appellant with a stool. Appellant denied that he cut Akers with a knife.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and specification had been proved. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-735095-D1 and all other licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 9 May 1955, Appellant was in the service of the American SS SETON HALL VICTORY as a wiper and acting under authority of his Merchant Mariner's Document No. Z-735095-D1 while the ship was in the port of Bremerhaven, Germany.

At about 1930 on this date, Appellant entered the Stoertebecker Bar in Bremerhaven where Akers was sitting on a stool at the bar. Able seaman Cook was standing near Akers. Appellant and Akers previously had engaged in a heated argument while the ship was in the Port of New York. Akers thought the matter had been settled and forgotten by all the parties involved. Apparently as a result of the prior trouble, Appellant advanced upon Akers using threatening language and at the same time drawing a knife from his trousers. Akers and Cook tried to dissuade Appellant from starting a fight; but Appellant lunged at Akers and stabbed him several times below the collarbone. Another member of the crew stepped between them, but Appellant stabbed Akers in the left hip; then Akers seized a stool and used it to prevent any further attack by Appellant. The police arrived and took Appellant into custody. The police found the knife which Appellant had thrown on the floor before their arrival. Aker's wounds were not deep although they required stitches.

For this offense, Appellant was convicted by the Bremerhaven county court and sentenced to three months imprisonment. At the trial, Appellant stated that Akers drew The knife and Appellant succeeded in seizing the knife in order to defend himself with it. This statement was refuted by the concordant testimony of the other witnesses to the incident.

There is no record of prior disciplinary action having been taken against Appellant.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the Examiner disregarded the surrounding circumstances by refusing to consider Akers' prior misconduct; the Examiner improperly received in evidence testimony that was medical in character and testimony as to what people may have said in the German court; the order of revocation was much too severe in view of Appellant's clear record while at sea for 10 years.

OPINION

The overwhelming weight of the evidence leaves no doubt as to proof of the specification and the propriety of the order of revocation. None of the witnesses at the trial in the German court or at the hearing agreed with Appellant's version. In fact, Appellant presented a different version at the hearing than at the trial.

In view of the premeditated, deliberate, unprovoked nature of this attack with a deadly weapon, it is sufficient to state that Appellant's contentions on appeal are completely without merit. The German court characterized Appellant's conduct as manifest brutality which easily could have resulted in serious injuries to Akers. I agree with this statement. Other seamen should not be required to live in the close confines of ships with a seaman who has such dangerous proclivities as Appellant.

ORDER

The order of the Examiner dated at New York, New York, on 30 August 1955 is AFFIRMED.

J.A. HIRSHFREED
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington D.C., this 4th day of April, 1956.